

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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JOSEPH TUMINELLO,  
  
Plaintiff,

Civ. Act. No.: 13 CIV 938 (KBF)(JCF)

**RULE 56.1 STATEMENT**

-against-

AETNA LIFE INSURANCE COMPANY,  
  
Defendants.

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Pursuant to Rule 56.1 of the Local Civil Rules for the Southern and Eastern Districts of New York, Plaintiff Joseph Tuminello ("Mr. Tuminello"), by his attorneys, Marc Whitehead & Associates, LLP and Riemer & Associates, LLC, submits this Rule 56.1 Statement of Facts:

**A. BACKGROUND**

1. Plaintiff Joseph Tuminello ("Mr. Tuminello") was employed by Bank of America ("BOA") commencing January 18, 2000 and ending August 30, 2009. (Declaration of Wanda Greene Celestine ("Celestine Decl."), ¶6, Ex. D, at TUMINELLO 000382, 914).
2. Tuminello described his position at BOA as "stock trader" (Celestine Decl., ¶6, Ex. D at TUMINELLO 000646), while BOA provided Aetna a generic job description for "Securities/ Product Salesperson" in response to Aetna's request for information regarding his essential duties and functions. (*Id.* at TUMINELLO 000409, 000530).

3. The last day Tuminello worked prior to his claimed disability was February 6, 2009. (Celestine Decl., ¶6, Ex. D at TUMINELLO 000383). According to Tuminello, he was absent from work due to various illnesses during the week prior to February 6, 2009. (*Id.* at TUMINELLO 000677).
4. Tuminello requested vacation during the week of February 9, 2009, but the request was denied. (*Id.*).
5. Although Tuminello was originally notified of his “job reduction” on February 5, 2009, his severance package was cancelled so that he could take a leave of absence. (*Id.* at TUMINELLO 000914).
6. Tuminello returned to active status on June 1, 2009, when he was given a new paid 90-day notification, and his termination date was August 30, 2009. (*Id.*)

DATED: August 23, 2013

Respectfully submitted,

MARC WHITEHEAD & ASSOCIATES,  
ATTORNEYS AT LAW L.L.P.

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**CERTIFICATE OF SERVICE**

I, Marc S. Whitehead, do hereby certify that on this the 23rd day of August, 2013, a true and correct copy of the foregoing was filed electronically and by overnight mail. Notice of this filing shall be sent by e-mail to all parties by operation of the Court's electronic filing system (ECF) and parties may access this filing through the Court's system.

/s/ Marc S. Whitehead  
Marc S. Whitehead  
Admitted *pro hac vice*

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